



COMMONWEALTH OF VIRGINIA

Commission on Youth



Legal Guardianship of a Minor by Court Petition

October 21, 2020

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- During the 2019 study year, the Commission on Youth reviewed Virginia's foster care system. At its December 4, 2019, meeting, the Commission approved nineteen recommendations in the areas of workforce recruitment and retention, Fostering Futures, kinship care, and foster care family recruitment and retention.
- As a result of feedback from local department site visits during its study, the Commission determined that guardianship of a minor by court petition is a potential legal arrangement that needs to be explored further.



- The Commission on Youth adopted the following recommendation related to guardianship:

Direct the Commission on Youth to study adding guardianship of a minor as a legal arrangement in Virginia by creating an Advisory Group to:

- a. Look at the benefits as well as the obstacles this change would create.
- b. Determine the potential impact on school enrollment and medical care.
- c. Investigate what would be the rights of the parties in such an arrangement.
- d. Explore the possible implementation of state-funded guardianship assistance.

Guardianship Advisory Group



- Cornerstones
- Court Appointed Special Advocates, Department of Criminal Justice Services
- Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia
- Division of Legislative Services
- Fairfax County Court Appointed Special Advocates
- Fairfax County Juvenile and Domestic Relations District Court
- Formed Families Forward
- Henrico County – Office of County Attorney
- Legal Aid Justice Center
- Local Departments of Social Services
 - Middlesex County
 - Shenandoah County
 - James City County
- Office of the Secretary of Health and Human Resources
- Patrick Henry Family Services
- Senate of Virginia
- Suffolk County Juvenile and Domestic Relations District Court
- Surry County – Commonwealth's Attorney Office
- Virginia Bar Association
 - Family Bar Coalition
 - Wills, Trusts & Estates Section
- Virginia Department of Education
- Virginia Department of Social Services
- Virginia House of Delegates
- Virginia League of Social Services Executives
- Virginia Poverty Law Center
- Virginia's Kids Belong
- Voices for Virginia's Children

Advisory Group Meetings



- Co-chaired by Senator Favola and Delegate Brewer
- Advisory Group on Guardianship of a Minor met:
 - June 15, 2020
 - July 20, 2020
 - October 6, 2020
- The advisory group heard presentations from the Virginia Department of Social Services, Department of Education, Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia, Generations United, and the ABA Center on Children and the Law.
- Deputy Commissioner of Human Services at the Virginia Department of Social Services, Nannette Bowler, presented the proposed guardianship model.



- According to the Office of the Administration for Children and Families (ACF), legal guardianship is an option available to parents who are planning for the care of their children in their absence due to a variety of situations, such as illness or incarceration.
- Virginia does have standby guardianship where a pre-appointed future guardian steps in after a triggering event occurs. (§§ 16.1-349 thru. 355)
- In other states, a person interested in the welfare of a minor will seek guardianship to prevent that child's involvement with the foster care system.
- In Virginia the transfer of custody process fills the above mentioned role of preventing a child's involvement in the foster care system.

Advisory Group Discussion



- Virginia does not have full/permanent guardianship or limited guardianship. How are these avenues similar and how do they differ from current options available in Virginia?
 - Legal custody: A party with a legitimate interest files petition for custody and the court gives primary consideration to the best interests of the child. (§§16.1-241 and 20-124.2)
 - Power of Attorney to Delegate Parental Powers: “A parent or legal custodian of a child, by a properly executed power of attorney, may delegate to another person, for a period not to exceed 180 days, any of the powers regarding the custody, care, and property of the child.” (§§ 20-166 thru. 167)
- Other issues raised
 - Family Partnership Meetings
 - Kinship Navigator



Guardianship



- Three types of guardianships were proposed at the advisory group meetings
 - Full/Permanent
 - Temporary
 - Limited
- Virginia Department of Social Services, Deputy Commissioner, Human Services, Nannette Bowler described the model based on work done in Michigan.
- Generations United and the ABA Center on Children and the Law also gave an informational presentation that suggested the benefits to using the guardianship models not currently found in Virginia.

Full/Permanent Guardianship Model



Proposed Model:

COURT PETITION

A person interested in the welfare of the minor (relative/fictive kin), or a minor if 14 years or older may petition for the appointment of a guardian for the minor.

Procedure: The petitioner shall give notice of the time and place of hearing of a petition for the appointment of a minor's guardian to each of the following:

- The minor, if 14 years of age or older.
- The person who had the principal care and custody of the minor during the days preceding the date of the petition.
- Each living parent of the minor, or if neither of them is living, the adult nearest of kin to the minor.



COURT GRANTS TEMPORARY GUARDIANSHIP

Court grants **temporary** guardianship (up to six months) to relative/fictive kin pending a hearing on **full/permanent** guardianship.

Full/Permanent Guardianship Model



COURT HEARING

Full/permanent guardianship granted by court:

- Notice to parties given and hearing is held.
- The Court may appoint a guardian for an unmarried minor if any of the following circumstances exist:
 - The parental rights of both parents or of the surviving parent have been terminated or suspended by prior court order, by judgement of divorce or separate maintenance, by death, by judicial determination of mental incompetency, disappearance, or by confinement in a place of detention.
 - The parent(s) do permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent(s) when the petition is filed.
 - All of the following:
 - The minor's biological parents have never been married to one another.
 - The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.
 - The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

Upon Hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, and the minor's welfare will be served by the requested appointment, the court shall make the appointment. In other cases the court may dismiss the proceeding or make another disposition of the matter that will serve the minor's welfare.

Full/Permanent Guardianship Model



ANNUAL REVIEW

The court may review a guardianship for a minor as it considers necessary and shall review a guardianship annually if minor is under 6 year of age. The guardian has duties that include filing an annual report until the child reaches the age of majority.

REVIEW PROCESS

In conducting the review the court shall consider all the following factors. The parent's and guardian's compliance with either of the following, as applicable:

- Whether the guardian has adequately provided for the minor's welfare.
- The necessity of continuing the guardianship.
- The guardian's willingness and ability to continue to provide for the minor's welfare.
- The effect upon the minor's welfare if the guardianship is continued.
- Any other factor that the court considers relevant to the minor's welfare.

The court may order the local department of social services if there is a concern of abuse or neglect or a court employee or agent to conduct an assessment and file a written report of the assessment regarding these factors. Upon completion of a guardianship review, the court may either continue the guardianship or schedule or conduct a hearing on the status of the guardianship. Court will use the best interest standard.

TERMINATION

As court conducts termination of guardianship the court will use the best interest of the minor standard.

Full/Permanent Guardianship Review

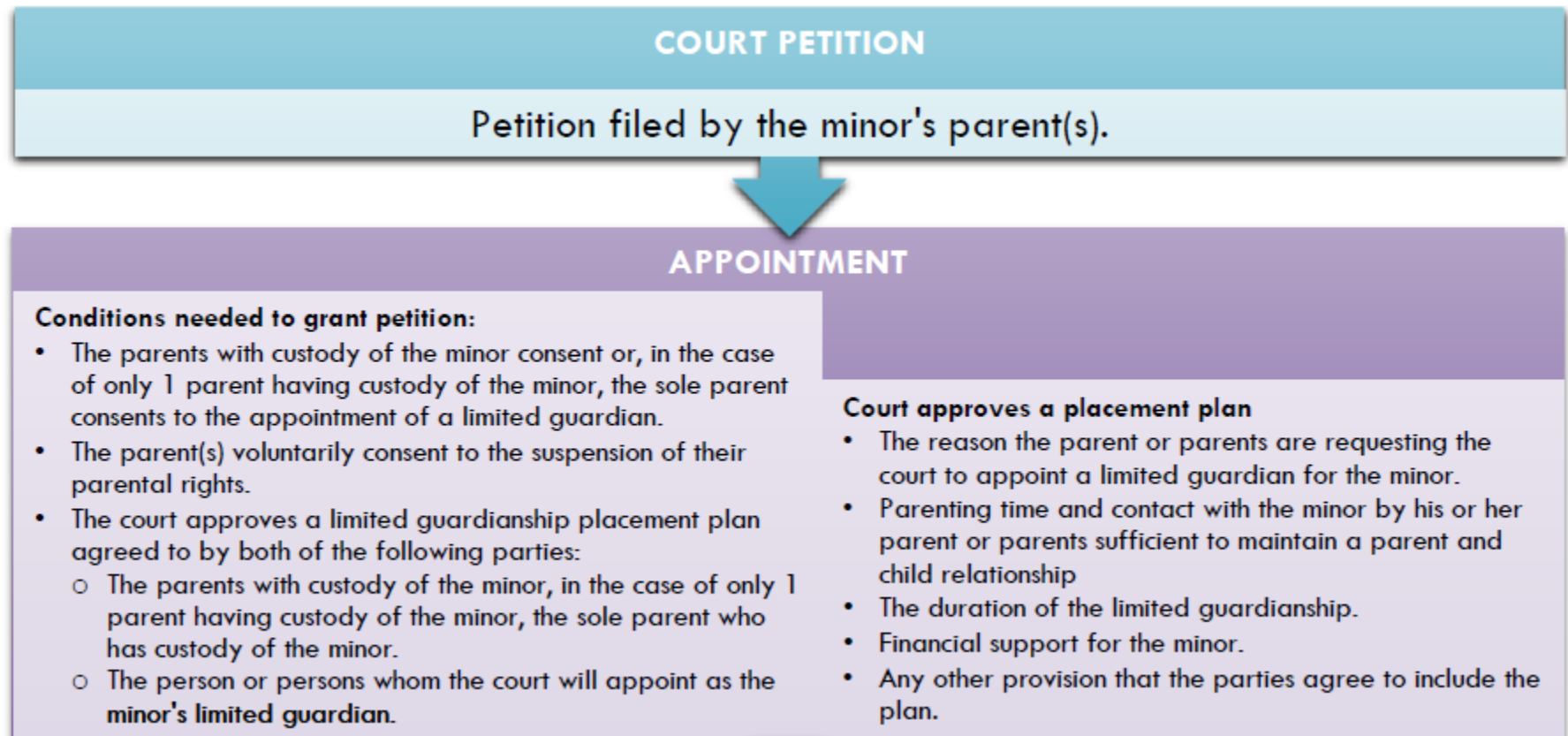


- Proponents argued that guardianship is a more useful term, would appeal more to children and families engaged in informal kinship care than current third party custody, and would allow for modifications or termination more easily than the custody process.
- Concerns ranged from court process issues, burden on court and local departments in regard to the review process, and the potential harm posed to parental rights.
- The advisory group recommended further study on the full/permanent guardianship model.

Limited Guardianship Model



Proposed Model:



Limited Guardianship Model



REVIEW PROCESS

In conducting the review the court shall consider all the following factors.

- The parent's and guardian's compliance with either of the following, as applicable:
 - A limited guardianship placement plan
 - A court-structured plan
- Whether the guardian has adequately provided for the minor's welfare.
- The necessity of continuing the guardianship.
- The guardian's willingness and ability to continue to provide for the minor's welfare.
- The effect upon the minor's welfare if the guardianship is continued.
- Any other factor that the court considers relevant to the minor's welfare.

The court may order the local department of social services if there is a concern of abuse or neglect or a court employee or agent to conduct an assessment and file a written report of the assessment regarding these factors. Upon completion of a guardianship review, the court may either continue the guardianship or schedule or conduct a hearing on the status of the guardianship. Court will use the best interest standard.

Limited Guardianship Model



TERMINATION

Upon petition, the court shall terminate limited guardianship, if either both parties consent or minor's parent(s) have substantially complied with placement plan.

- After notice and hearing on a petition to terminate a limited guardianship, the court shall terminate the limited guardianship if it determines that the minor's parent or parents have substantially complied with the limited guardianship placement plan. The court may enter orders to facilitate the minor's reintegration into the home of the parent or parents for a period of up to 6 months before the Termination

For a petition to terminate a guardianship where parties do not consent or parent does not substantially comply with the placement plan, after notice and hearing, the court may do any of the following:

- Terminate the guardianship if the court determines that it is in the best interests of the minor, and do any of the following:
 - Enter orders to facilitate the minor's reintegration into the parent's home for a period of up to 6 months before the termination
 - Order the Local Department of Social Services to supervise the transition period when the minor is being reintegrated into his or her parent's home.
 - Order the Local Department of Social Services to provide services to facilitate the minor's reintegration into his or her parent's home.
- Continue the guardianship for not more than 1 year after the hearing date if the court determines that it is in the best interests of the minor, and do any of the following:
 - If the guardianship is a limited guardianship, order the parent or parents to comply with 1 of the following:
 - The limited guardianship placement plan.
 - A court-modified limited guardianship placement plan.

Limited Guardianship Review



- Senator Favola recommended a compromise limited guardianship proposal that clarified that the initial appointment period can be for up to 12 months. Her proposal also removed the requirement for the court or local department to create a placement plan.
- Proponents of moving forward with the limited guardianship plan argued it would be another tool in the toolbox for children and families in crisis.
- Concerns were raised about obtaining consent of both parents when filing the petition as well as the potential harm posed to parental rights.
- The advisory group was split on whether to go forward with recommending limited guardianship. Because the group did not reach a consensus, they recommended that the Department of Social Services study full/permanent and limited guardianship further.



Family Partnership Meetings

What are Family Partnership Meetings?



- A few members of the advisory group brought up the role of family partnership meetings (FPMs) in regards to diversion and families in need of preventions services.
- FPMs help families with decision making and engagement throughout involvement with the child welfare system. FPMs are led by a trained facilitator (separate from the service worker connected to the family).
- FPMs are held:
 - For all decisions involving prevention of out-of-home placements in CPS families assessed at “very high” or “high” risk of abuse or neglect.
 - Prior to a child’s removal from a birth or adoptive family.
 - Prior to a change of placement.
 - Prior to a change of goal.
 - When a meeting is requested by the parent, child, or service worker.

Family Partnership Meetings



- The Virginia Department of Social Services has extensive guidance on the use of family partnership meetings for engaging families at important decision points.
- This practice is not defined in the *Code* and is referenced briefly in regulations.
- The advisory group debated making a recommendation that the practice be defined in *Code* language. Several members felt that because FPMs are a social work practice, it is unnecessary and not appropriate for the practice to be codified.



Kinship Navigator



Advisory group discussion highlighted the importance of access to supports for families who step forward and take care of kin.

What is a kinship navigator?

- A Kinship Navigator “offers supports to kinship caregivers to assess needs and arrange necessary services to provide support, education, and information to caregivers to ensure that all of the kinship caregivers are aware of and have access to supportive services, such as financial benefits, therapeutic services, and training.”¹
- Kinship Navigators assist with the school registration process as well as supportive services such as obtaining a birth certificate and social security card or providing clothing and hygiene supplies as necessary.



- In 2019, Virginia's Kinship Navigator programs served 655 youth and 591 kinship caregivers with information, referrals, and other follow-up services.



- Currently in Virginia there are 6 Kinship Navigator programs that serve 40 localities and 33 percent of the state.
- The current Navigators are funded through a federal grant from the Children's Bureau.
- The General Assembly has expressed interest in expanding Kinship Navigator access across the state. Language was included in the 2020 budget requesting the Department of Social Services to develop a plan to provide access statewide to a Kinship Navigator program.

VA Kinship Navigators

Arlington Department of Social Services - partnering with Alexandria, Fairfax, Prince William, and Loudon DSS

Bedford Department of Social Services - partnering with Amherst, Appomattox, Campbell, Lynchburg, and Nelson DSS

Dickenson Department of Social Services - partnering with Buchanan, Russell, Tazewell, Lee, Wise, Scott, and Norton DSS

James City County Department of Social Services - partnering with Williamsburg and York-Poquoson DSS

Virginia Department of Human Services - partnering with Chesapeake, Portsmouth, Suffolk, and Norfolk DSS

Smyth Department of Social Services - partnering with Wythe, Bland, Bristol, Carroll, Galax, Giles, Grayson, Montgomery, Pulaski, Radford, and Washington DSS



GUARDIANSHIP

Findings and Recommendations

Finding: Guardianship



Finding: Full/permanent, temporary, and limited guardianship models presented to the Commission on Youth Advisory group need further exploration by the Department of Social Services if they are to be implemented.

Recommendation:

Request that the Virginia Department of Social Services convene a study group with impacted stakeholders to study ways to develop full/permanent, temporary, and limited guardianship in Virginia to reflect the need for additional permanency goals for children. Further, request that the Virginia Department of Social Services complete its study and submit a final report with recommendations the Commission on Youth and Governor by December 1, 2021.

For this work group, the Virginia Department of Social Services shall collaborate with the family bar coalition, family law attorneys, the Supreme Court of Virginia, Juvenile and Domestic Relations District Court judges, local departments of social services, advocates, parents, and any other interested stakeholders that it deems appropriate.



FAMILY PARTNERSHIP MEETINGS

Findings and Recommendations

Finding: Family Partnership Meetings



Finding: Currently, family partnership meetings (FPMs) are found in guidance and referenced in regulations. Guidance indicates that these meetings are to be held:

- For all decisions involving prevention of out-of-home placements in CPS families assessed at “very high” or “high” risk of abuse or neglect.
- Prior to a child’s removal from a birth or adoptive family.
- Prior to a change of placement.
- Prior to a change of goal.
- When a meeting is requested by the parent, child, or service worker.

Finding: Advisory Group discussion highlighted the role of FPMs as a beneficial social work practice, and no concerns were raised about the current process.

Recommendation:

Request the Board of Social Services develop any necessary regulations for the use of family partnership meetings by local departments.



KINSHIP NAVIGATOR

Findings and Recommendations

Finding: Kinship Navigator



Finding: The 2020 Appropriation Act contains language that states: “The Department of Social Services shall develop a plan to provide access statewide to a Kinship Navigator Program which will provide services to kinship caregivers who are having trouble finding assistance for their unique needs and to help these caregivers navigate their locality's service system, as well as federal and state benefits.”

Kinship Navigators that are already funded across the state in various localities are supported by Federal grant dollars.

Recommendation:

Introduce a budget amendment to enact funding for a statewide Kinship Navigator Program. The budget amendment amount will be based on input from the Virginia Department of Social Services.



Public Comment

Written public comment must be
received by 5:00 p.m.
on December 2, 2020.

Submission instructions are available
online (<http://vcoy.virginia.gov>)